AFIELD

PTO/SB/31 (09-06)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Docket Number (Optional) NOTICE OF APPEAL FROM THE EXAMINER TO 2003 THE BOARD OF PATENT APPEALS AND INTERFERENCES I hereby certify that this correspondence is being facsimile transmitted John T. Matthews, et al. In re Application of to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-Application Number Filed 11/12/2003 1450" [37 CFR 1.8(a)] Collapsible Canopy and Framework Therefor Art Unit Examiner Timothy Michael Ayres 3637 Typed or printed Marcie F. name Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner. 500.00 The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced 250.00 by half, and the resulting fee is: A check in the amount of the fee is enclosed. Payment by credit card. Form PTO-2038 is attached. The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet. The Director is hereby authorized to charge any fees which may be required, or credit any overpayment . I have enclosed a duplicate copy of this sheet. to Deposit Account No. A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038. I am the applicant/inventor. assignee of record of the entire interest. Timothy J. Martin See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. Typed or printed name (Form PTO/SB/96) attorney or agent of record. 28.640 (303) 232-3388 Registration number Telephone number attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if moré than one signature is required, see below\*.

X \*Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Claims 2 and 3 stand rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Holy et al. For the same reasons above and because Holy et al. provide no motivation to use the nonionic surfactant monomers as thickeners, Applicants respectfully submit that claims 2 and 3 are not anticipated by or, in the alternative, obvious over Holy et al. and request this rejection be withdrawn.

Claims 7 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Holy et al. For the same reasons above, Applicants request this rejection be withdrawn.

Claims 5 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Holy et al. in view of Jenkins et al. (U.S. Patent No. 5,401,802). Although these claims have been canceled, the subject matter of these claims has been incorporated into claims 1 and 6. Applicants assert that the combination of Holy et al. and Jenkins et al. neither teaches nor discloses Applicants' invention.

Jenkins et al. disclose compositions having water-soluble polymers comprising hydrophobic segments. (See, Abstract). However, Jenkins et al. do not disclose anything that suggests that initiator selection is important to properties of these compositions. In light of the above arguments distinguishing Holy et al. and Jenkins et al. from Applicants' invention, Applicants respectfully request this rejection be withdrawn.

Claims 1, 4, 6 and 9 stand rejected under 35 U.S.C. §102(b) as anticipated by Kirk et al. (U.S. Patent No. 5,597,509). Applicants respectfully submit that Kirk et al. neither teach nor disclose an aqueous composition comprising a polymer, having at least one ionic monomer and a nonionic surfactant monomer, formed in the presence of t-alkyl hydroperoxides, t-alkyl perexides, t-alkyl perexides, and mixtures thereof.

Kirk et al. disclose a polymer product is formed from about 3 to about 50 weight percent of at least one monoethylenically unsaturated dicarboxylic acid monomer, from about 50 to about 97 weight percent of at least one monoethylenically unsaturated monocarboxylic acid monomer, and from 0 to about 40 weight percent of one or more carboxyl-free monoethylenically unsaturated monomers. (See, Abstract). However, Kirk et al. do not disclose surfactant monomers. Kirk et al. do not even mention of the use of their polymer products as thickeners or the need for consistent viscosity in their uses.

Kirk et al. cite broad classes of initiators, including t-amyl hydroperoxide. However, Kirk provides no motivation to explore any specific subset of initiators in relation to thickeners, and in fact, teaches away from using t-amyl in specifically stating preference for persulfates as initiators (col. 7, lines 5-7). In light of the above, Applicants request this rejection be withdrawn.

Claims 2 and 3 stand rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Kirk et al. For the same reasons above, Applicants respectfully submit claims 2 and 3 are not anticipated by or, in the alternative, obvious over Kirk et al. and request this rejection be withdrawn.

Claims 7 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kirk et al. For the same reasons above, Applicants request this rejection be withdrawn.

Claims 5 and 10 stand rejected under 35 U.S.C. §103(a) as unpatentable over Kirk et al. in view of Jenkins et al. Since this prior art has been addressed above and claims 5 and 10 have been canceled, Applicants request this rejection be withdrawn.

## **Conclusion**

In view of the above remarks, Applicants believe that the pending claims are in condition for allowance, and early and favorable action is earnestly solicited.

This Paper is believed timely filed with a one (1) month extension of time. Please consider this Response to comprise a Petition for such an extension of time. If any additional fee is deemed required for consideration of this Response, the Commissioner is hereby authorized to charge such fee to Deposit Account No. 18-1850.

September 23, 2005

Date

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